

August 15, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, D.C. 20554

Dear Secretary Dortch:

Enclosed please find comments from the Massachusetts Statewide Emergency Telecommunications Board submitted for filing in the **Petition for Rulemaking on Compliance by Carriers with Relevant Statutory Provisions on Disclosure of Customer Information in 911 Emergencies**, RM-10715, DA 03-1952.

Thank you for your assistance with this matter.

Sincerely,

Anne Marie Ferreira
Assistant General Counsel

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Petition for Rulemaking on Compliance)	
By Carriers with Relevant Statutory)	RM-10715
Provisions on Disclosure of Customer)	
Information in 911 Emergencies)	

**COMMENTS OF THE MASSACHUSETTS STATEWIDE EMERGENCY
TELECOMMUNICATIONS BOARD**

Introduction

The Massachusetts Statewide Emergency Telecommunications Board ("SETB") submits these comments in connection with the above referenced matter in response to Public Notice DA 03-1952 by the Federal Communications Commission ("FCC") issued on June 16, 2003. The SETB supports the Petition for Rulemaking (RM-10715) submitted by the National Emergency Number Association ("NENA"), the Association of Public-Safety Communications Officials-International, Inc. ("APCO") and the National Association of State Nine One One Administrators ("NASNA"). The SETB supports rulemaking by the FCC that would require wireless carriers to provide location and subscriber information to emergency personnel for wireless 911 calls.

The SETB is a board under the jurisdiction of the Executive Office of Public Safety, an executive branch agency of the Commonwealth of Massachusetts. The SETB is responsible for coordinating and implementing wireline and wireless enhanced 911 in Massachusetts. In addition, the SETB administers the service, including but not limited to the promulgation of technical and operational standards of design and implementation, of 274 public safety answering points (PSAPs) that utilize enhanced 911 network features. In Massachusetts, most municipalities have PSAPs where dispatchers receive emergency calls made through wireline carriers. The Massachusetts State Police, however, receive all emergency calls made through wireless carriers. The Massachusetts State Police has also submitted comments to the FCC regarding this petition.

Current Procedure

Dispatchers at Massachusetts PSAPs are confronted with life and death emergency situations on a daily basis. These dispatchers are trained to provide temporary medical assistance and a calming presence to those in need. The most important aspect of a dispatcher's job is the ability to successfully communicate to emergency personnel the location of a caller or the individual in need of assistance. This ability is severely impaired when the call comes from a cellular/wireless telephone.

Unlike Enhanced 911, which provides PSAPs with the telephone number of the caller and the caller's location through access to the databases of the phone companies, exact location information is not available through the wireless system. When a dispatcher receives a call from an individual seeking emergency assistance on the wireless system, the caller must provide the location information themselves. Often, the caller is unable or unwilling to provide the information to the dispatcher. In these situations, the dispatcher's only option is to contact the wireless carrier. The information received by the dispatcher and the timeliness of response varies by carrier and carrier policy. Generally, however, each carrier requires the dispatcher to call the carrier, explain the situation and then fax a form (usually provided by the carrier) to the carrier in support of the request. The dispatcher must then wait for a response from the carrier.

According to information provided by the Massachusetts State Police, in 60% of the incidences, the wireless carriers' response time exceeds 10 minutes, with many cases resulting in a wait of several hours. In all emergency situations, every minute counts. It is therefore important that a better process be developed to ensure that dispatchers receive location information from wireless carriers in a timely and efficient manner.

Federal Law

Guidelines for the rulemaking can be found in current federal laws. The Communications Act, includes exceptions allowing for the dissemination of subscriber information to certain individuals and parties. 47 U.S.C. § 222(d)(4) allows a telecommunications carrier "to provide call location information concerning the user of a commercial mobile service-(A) to a public safety answering point, emergency medical service provider or emergency dispatch provider, public safety fire service or law enforcement official, or hospital emergency or trauma care facility, in order to respond to the user's call for emergency services; (B) to inform the user's legal guardian or members of the user's immediate family of the user's location in an emergency situation that involves the risk of death or serious physical harm; or (C) to providers of information or database management services solely for purposes of assisting in the delivery of emergency services in response to an emergency." A commercial mobile service, as defined by 47 U.S.C. § 332(d), is any mobile service that is provided for profit and makes interconnected service available to the public or to other eligible users as to be effectively available to a substantial portion of the public.

This exemption provides a foundation for the FCC if the FCC decides to institute the rulemaking process. The exemption allows a telecommunications carrier to provide call location information regarding the user of the commercial mobile service to a PSAP, to the user's family members or to providers of information or database management services in response to an emergency. The exemption is useful for all emergency situations rather than only situations where an individual's life is at risk.

The SETB, however, urges the FCC, to the extent that it is within the FCC's powers and this rulemaking, to further define the word "user" as it appears in 47 U.S.C. § 222 (d)(4). The user of a commercial mobile service may not be the individual in need of

help or aware of the location of the individual in need of help. It is important, in emergency situations, to have every option available to the dispatcher in order for emergency personnel to locate the individual in need in the most efficient and timely manner possible. By expanding the definition of the word “user” to include a subscriber in a situation that involves the risk of death or serious physical harm, the wireless carrier would be able to release subscriber information regardless of whether the subscriber is actually the person making the call to 911.

Patriot Act

18 U.S.C. § 2702(b)(6)(C) and 18 U.S.C. § 2702 (c)(4) also grants wireless carriers the authority to disseminate subscriber communication content and subscriber record information to dispatchers in emergency situations. 18 U.S.C. § 2702(b)(6)(C) allows an exception for the disclosure of customer communications; “[a] provider described in subsection (a) may divulge the contents of a communication...to a law enforcement agency...if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay.” 18 U.S.C. § 2702(c)(4) provides an exception for the dissemination of subscriber records; “[a] provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service...to a governmental entity, if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information.” The language of the two exceptions in 18 U.S.C. § 2702 allows wireless carriers to disseminate subscriber information to dispatchers in emergency situations, however, 18 U.S.C. § 2702 does not mandate the dissemination of that information in an emergency situation. Therefore, each wireless carrier can make the decision whether to disseminate the information regardless of the emergency nature of the situation.

The SETB urges the FCC, to the extent that it is within the FCC’s powers and this rulemaking, to require mandatory disclosure by each wireless carrier of subscriber information to dispatchers in emergency situations in a timely and efficient manner. Mandatory disclosure of subscriber information by wireless carriers would enable dispatchers to receive the information needed in every situation, in a consistent manner. With a mandatory disclosure system in place, the process required for a dispatcher to make a request for information to the wireless carrier and the response time of the wireless carrier should be more efficient and therefore, keep the response time to a minimum. This will enable emergency personnel to reach an individual in need in the proper amount of time.

18 U.S.C. § 2703(c) allows a governmental entity to require a provider of electronic communication service to disclose a record or other subscriber information to a governmental entity in a number of situations, including when the service has attained the consent of the subscriber or customer for such a disclosure. The wireless carrier could carry out 18 U.S.C. § 2703(c) by requiring specific consent of the subscriber at the time the individual subscribes to the service through an agreement. The wireless carrier could

also place a clause within all subscriber contracts allowing the dissemination of the information pursuant to 18 U.S.C. § 2703(c). This clause would essentially provide implied consent by the subscriber to disseminate subscriber information.

If the FCC adopted a requirement that wireless carriers attain the consent of subscribers for the release of subscriber information in any circumstance, the need for a mandatory disclosure by wireless carriers of subscriber information would no longer exist. The FCC, however, should, to the extent that it is within the FCC's power and this rulemaking, ensure whether through mandatory disclosure or subscriber consent, that wireless carriers disseminate subscriber information to dispatchers for emergency situations in a timely and efficient manner.

National Guidelines

The SETB supports, to the extent that it is within the FCC's powers and this rulemaking, the establishment of national guidelines for the dissemination of subscriber information by wireless carriers, if more guidance cannot be provided regarding the federal statutes previously discussed. Currently, in Massachusetts, the SETB and the Massachusetts State Police have proposed a policy for the dissemination of wireless carrier subscriber information to dispatchers for emergency situations. The six wireless carriers operating in Massachusetts agreed to cooperate with the provisions of the proposed policy. The proposal follows the basic procedure outlined in most wireless carriers' emergency policies but there are two important differences. First, through agreement with the wireless carriers, the policy allows the use of one universal Wireless Subscriber Information Request Form. The ability to use one information request form allows the dispatchers to use their time and energy in a more efficient manner. Second, through agreement with the wireless carriers, each carrier has provided an additional emergency number to call when a dispatcher seeks subscriber information. Under the proposed SETB/State Police policy, each wireless carrier has provided an additional after hour emergency number where dispatchers may reach an actual person, instead of an answering machine, to request the information.

Conclusion

The SETB supports rulemaking by the FCC that would require wireless carriers to

provide location and subscriber information to emergency personnel for wireless 911 calls.

Respectfully submitted,
STATEWIDE EMERGENCY
TELECOMMUNICATIONS BOARD

By Its Attorneys,

Susan M. Prosnitz
General Counsel
BBO# 555344
Anne Marie Ferreira
Assistant General Counsel
BBO# 652724
Executive Office of Public Safety
One Ashburton Place
Boston, MA 02108
(617) 727-7775

August 15, 2003